

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

DIANA RUIZ-ESPARZA,	§	
<i>Plaintiff,</i>	§	Civ. Action No. 3:10-cv-00234-DB
	§	
v.	§	
	§	
THE UNIVERSITY OF TEXAS AT EL	§	
PASO,	§	
<i>Defendant.</i>	§	
	§	

DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES

TO THE HONORABLE DAVID BRIONES, UNITED STATES DISTRICT JUDGE:

Defendant The University of Texas at El Paso (“UTEP”) files its Answer and Affirmative Defenses to Plaintiff’s Complaint and respectfully states as follows:

ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), UTEP denies each and every allegation contained in Plaintiff’s Complaint except for those expressly admitted herein. The numbered paragraphs herein correspond to the paragraphs within the body of Plaintiff’s Complaint. UTEP responds as follows:

JURISDICTION AND VENUE

1. UTEP admits that this Court has jurisdiction over Plaintiff’s claims, but denies that Plaintiff is entitled to any of the relief she seeks.
2. UTEP admits that venue is proper, but otherwise denies the averments of this paragraph.

PARTIES

3. UTEP admits the averments in this paragraph.

4. UTEP admits that it is an “employer” as that term is used in the Equal Pay Act of 1963, 29 U.S.C. § 206(d).

STATEMENT OF CLAIMS

5. UTEP admits the averments in this paragraph.

6. UTEP admits the averments in this first sentence of this paragraph. UTEP denies the averments in this second sentence of this paragraph.

7. UTEP admits the averments in this paragraph.

8. UTEP denies the averments in this paragraph.

9. UTEP denies knowledge or information as to the averments in this paragraph because the word “regular” is vague and ambiguous.

10. UTEP admits the averments in this paragraph.

11. UTEP admits that the named persons are current or former employees of UTEP in the Planning and Construction Department under the Vice President for Business Affairs Division.

12. UTEP denies the averments in this paragraph.

13. UTEP denies the averments in this paragraph.

14. UTEP admits the averments in this paragraph.

15. UTEP denies the averments in this paragraph.

16. UTEP denies the averments in this paragraph.

17. UTEP admits the averments in this paragraph.

18. UTEP denies the averments in this paragraph.

19. UTEP denies the averments in this paragraph.
20. UTEP admits the averments in this paragraph.
21. UTEP denies the averments in this paragraph.
22. UTEP denies the averments in this paragraph.
23. UTEP admits the averments in this paragraph.
24. UTEP denies the averments in this paragraph.
25. UTEP denies the averments in this paragraph.
26. UTEP denies the averments in this paragraph.
27. UTEP denies the averments in this paragraph.
28. UTEP denies the averments in this paragraph.

PRAYER FOR RELIEF

UTEP denies that Plaintiff is entitled to any of the relief requested in her prayer for relief.

JURY TRIAL DEMAND

UTEP admits that Plaintiff demands a jury trial in this action.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Sovereign immunity bars any and all of Plaintiff's claims to which that defense may apply.
3. The Eleventh Amendment bars any and all of Plaintiff's claims to which that defense may apply.
4. Any differences in payments to employees for equal work on jobs the performance of which required equal skill, effort, and responsibility as that of Plaintiff, and which were performed under similar working conditions as that of Plaintiff, were made pursuant to (i) a

seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

5. At all times relevant to this cause, UTEP's actions were reasonable and proper under the laws of the State of Texas and the United States.

6. Plaintiff failed to mitigate her damages, if any.

7. Plaintiff's own acts and/or omissions caused or contributed to the Plaintiff's injuries, if any.

8. Plaintiff failed to exhaust his administrative remedies, to the extent applicable.

9. Plaintiff's claims, in whole or in part, are time barred by the applicable statute of limitations period.

10. UTEP reserves the right to raise additional affirmative defenses as they become apparent during the development of the case.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant UTEP respectfully requests that the Court enter judgment for it and against Plaintiff, holding that Plaintiff take nothing by her action and award UTEP such further relief to which it is entitled, including costs and attorney's fees.

Dated: July 20, 2010

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

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First Assistant Attorney General

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***ATTORNEYS FOR DEFENDANT
THE UNIVERSITY OF TEXAS AT EL
PASO***

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Answer and Affirmative Defenses was served via the *CM/ECF system* on July 20, 2010, to:

Leticia Dominguez
5823 N. Mesa #831
El Paso, Texas 79912
Attorney for Plaintiff

/s/ Darren G. Gibson

DARREN G. GIBSON

Assistant Attorney General